REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

WELLS FARGO ENTERPRISE GLOBAL SERVICES, LLC-PHILIPPINES,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9617

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, *JJ.*

Promulgated:

MAY 31 2019 10:20 am

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RESOLUTION

CASTAÑEDA, JR., *J.*:

This resolves petitioner's **Motion for Reconsideration**, filed on March 27, 2019, without respondent's comment as per Records Verification dated May 7, 2019.

In its motion, petitioner seeks reconsideration of the Court's Decision promulgated on March 11, 2019 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit.
>
> **SO ORDERED**."

In support of its motion, petitioner avers that the Court erred when it relied on *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue*[1] and *Commissioner of Internal Revenue vs. Toshiba Information Equipment (Phils.), Inc.*[2], arguing that the said cases did not resolve the issue of whether or not a sale that is outside a PEZA enterprise's registered activity is subject to VAT. Petitioner also insists that Revenue Memorandum Circular No. No. 74-99 only applies in cases where the transaction is within the PEZA-registered activity of the taxpayer involved. Finally, petitioner argues that even assuming that the sale by Wells Fargo Philippines Solutions Inc. ("WFPSI") to petitioner was VAT-exempt, respondent should not now be allowed to take a different stance convenient to it and deprive petitioner of its claim for refund of taxes which would have been erroneously paid to the government. According to petitioner, to require that the seller be the one to file a claim for refund (now that the two-year prescriptive period from the payment of the tax has passed) would result in unjust enrichment on the part of the government.

After carefully reviewing petitioner's arguments, the Court notes that the same are a mere rehash or amplifications of the same facts and issues which have already been passed upon and extensively discussed in the assailed Decision.

As to petitioner's assertion that to require that the seller (WFPSI) be the one to file a claim for refund (now that the two-year prescriptive period from the payment of the tax has passed) would result in unjust enrichment on the part of the government, suffice it to say that the fundamental duty of the Court is to apply the law regardless of who may be affected.[3] It is well-settled that reporting and remittance of the VAT paid to the Bureau of Internal Revenue remains to be the seller/supplier's obligation; hence, the proper party to seek the tax refund or credit should be the suppliers, not petitioner.[4] The rule must stand no matter how harsh it may seem. *Dura lex sed lex.*[5]

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[1] G.R. No. 190506, June 13, 2016.
[2] GR. No. 150154, August 9, 2005.
[3] *Jesus Nepomuceno, et al. vs. Rehabilitation Finance Corporation (now Development Bank of the Philippines)*, G.R. No. L-14987, November 23, 1960.
[4] *Coral Bay Nickel Corporation vs. Commissioner of Internal Revenue,* G.R. No. 190506, June 13, 2016; *Silkair Singapore Pte. Ltd. vs. Commissioner of Internal Revenue*, G.R. No. 166482, January 25, 2012, citing *Contex Corporation vs. Commissioner of Internal Revenue,* G.R. No. 151135, July 2, 2004.
[5] *Land Bank of the Philippines vs. Republic of the Philippines, represented by the Director of Lands,* G.R. No. 150824, February 4, 2008.

Considering the foregoing, there is no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** is **DENIED** for lack of merit.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

(With Separate Opinion.)
CATHERINE T. MANAHAN
Associate Justice

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SEPARATE OPINION

MANAHAN, *J.:*

While I concur with the end result that petitioner's Motion for Reconsideration be denied, I wish to reiterate the position I have previously taken in *Hinatuan Mining Corp. v. Commissioner of Internal Revenue*[1] and *CBK Power Company Limited v. Commissioner of Internal Revenue*[2] with respect to the recourse available to petitioner in recovering its input VAT. Thus:

> xxx [T]here is a need to de-clutter the evidentiary standards for claims for refund of input VAT attributable to zero-rated or effectively zero-rated sales and resolve it on the basis of whether or not the taxpayer complied with the following well-settled requisites:
>
> 1. That the taxpayer is VAT-registered;
> 2. That the claim for refund was filed within the prescriptive period;
> 3. That there must be zero-rated or effectively zero-rated sales;
> 4. That input taxes were incurred or paid;

[1] CTA Case No. 9092, November 3, 2017.
[2] CTA EB No. 1685, February 20, 2019.

5. That such input taxes are attributable to zero-rated or effectively zero-rated sales; and
6. That the input taxes were not applied against any output VAT liability.

Additionally, if records would show that output and input taxes were paid by the local supplier/s and petitioner, respectively, I humbly believe that recourse against the government by way of a claim for refund, is more legally sound than directing the claimant to seek redress from its suppliers. xxx Although, statutorily, the supplier is the taxpayer of the output VAT, there is no compelling reason on its part to claim for the refund because the burden of the tax, i.e., input tax, was assumed by the buyer.

CATHERINE T. MANAHAN
Associate Justice